

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

CAROLE ANNE SMITH,

Plaintiff,

**8:12-cv-1087
(GLS/TWD)**

v.

BRIAN JOHNSON et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Carole Anne Smith
Pro Se
72 Balsam Street
Lake Placid, NY 12946

FOR THE DEFENDANTS:

NO APPEARANCE¹

**Gary L. Sharpe
Chief Judge**

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Carole Anne Smith commenced this action against various security officials at the Albany International Airport under *Bivens v.*

¹ Service on defendants has not yet been permitted as this case comes to the court as part of the preliminary review under 28 U.S.C. § 1915.

Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971). (See Compl., Dkt. No. 1.) In a Report-Recommendation and Order (R&R) filed November 13, 2012, Magistrate Judge Thérèse Wiley Dancks recommended that Smith's Complaint be dismissed with leave to amend her Title VII² and Americans with Disabilities Act (ADA)³ claims.⁴ (See *generally* R&R, Dkt. No. 5.) Pending are Smith's objections to the R&R. (See Dkt. No. 8.) For the reasons that follow, the R&R is adopted in its entirety, and Smith's Complaint is dismissed with leave to amend the Title VII and ADA claims.

II. Standard of Review

Before entering final judgment, this court routinely reviews all report-recommendation and orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations *de novo*. See *Almonte v. N.Y. State Div. of Parole*, No.

² See 42 U.S.C. §§ 2000e-2000e-17.

³ See 42 U.S.C. §§ 12101-12300.

⁴ The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

Civ. 904CV484GLS, 2006 WL 149049, at *6-7 (N.D.N.Y. Jan. 18, 2006).

Where no party has filed an objection, only vague or general objections are made, or a party resubmits the same papers and arguments already considered by the magistrate judge, this court reviews the findings and recommendations of the magistrate judge for clear error. See *id.* at *4-5.

III. Discussion

Even liberally construed, Smith's submission is not an objection to the R&R. (See Dkt. No. 8 at 1-2.) Rather, it is a perfectly viable explanation of why she filed a *Bivens* action, and the steps she is taking to seek assistance in pursuing her claim. (See *id.*) Moreover, because Judge Dancks already recommended the relief Smith seeks—that is, time to amend her Complaint, which is akin to “time to refile,” (*id.* at 2)—the court need only decide how long she has to do so. (See R&R at 4-5.) As such, having found no clear error in the R&R, the court adopts it in its entirety and grants Smith forty-five (45) days to file her Amended Complaint. The court cautions Smith though, that if she elects to file an Amended Complaint, she must address the deficiencies Judge Dancks noted in the R&R. (See *id.*)

IV. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Magistrate Judge Thérèse Wiley Dancks' November 13, 2012 Report-Recommendation and Order (Dkt. No. 5) is **ADOPTED** in its entirety; and it is further

ORDERED that Smith's Complaint (Dkt. No. 1) is **DISMISSED** with leave to amend her Title VII and ADA claims; and it is further

ORDERED that Smith may—in accordance with the requirements of N.D.N.Y. L.R. 7.1(a)(4)—file an Amended Complaint, if she can, in good faith, allege sufficient facts to cure the deficiencies articulated in Judge Dancks' R&R, within forty-five (45) days of this order; and it is further

ORDERED that if Smith fails to file an Amended Complaint within forty-five (45) days of the date of this Memorandum-Decision and Order, the Clerk is directed to close this case without further order of the court; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties by certified mail.

IT IS SO ORDERED.

January 15, 2013
Albany, New York


Gary L. Sharpe
Chief Judge
U.S. District Court